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July 13, 1983

Mr. Robert Hankins  
New Hampshire Commission on the Arts  
40 North Main Street  
Concord, New Hampshire 03301

Dear Mr. Hankins:

You have requested this department's advice regarding whether the Arts Commission may purchase pieces of the Berry Elm tree for use in various projects. It is our understanding that the Berry Elm is the largest and oldest Elm tree in the State of New Hampshire. As explained to us, the pieces of Berry Elm would be used for two projects. One would be to make small wood medallions which would be distributed for public relations purposes, and the other would be to commission nine pieces of wood sculpture which would belong to the state and would be placed in state buildings. We have reviewed the statutes relating to the powers of the Arts Commission and conclude that the purchase and proposed projects for the use of the Berry Elm conform with state law.

RSA 19-A:10, II provides that the Commission may "acquire ... such works of arts as it deems appropriate for placement in state buildings and facilities." RSA 19-A:8, III defines a "work of art" as "any object of historical significance." We think that because the Berry Elm tree can be considered an "object of historical significance" under this section, the Arts Commission may acquire pieces of it for placement in state buildings.




The related question you have asked is whether the Arts Commission may commission nine pieces of sculpture to be made from the Berry Elm. RSA 19-A:6, VI specifically provides that the Commission may "allocate and disburse said funds by entering into contracts and agreements ... in order to carry out the purposes of this chapter, ...". The purposes of the chapter are broadly defined in RSA 19-A:1, as "encouraging and assisting ... artistic expression." We think that commissioning wood sculpture for state buildings clearly falls within these stated purposes. We, therefore, conclude that pieces of the Berry Elm may be purchased for the purpose of commissioning wood sculpture for placement in state buildings.

The other proposed project focuses on public relations. RSA 19-A:6, III provides that the Arts Commission may "perform any acts that may be necessary, desirable or proper to carry out the purposes of this chapter." This provision empowers the Commission to spend money on public relations and advertising. The FY 1983 budget for the Commission allocated \$8,000 for public relations. If similar funds are available in FY 1984, part of the purchase price of the Berry Elm and the associated costs in fabricating medallions may be paid with funds budgeted for public relations.

I trust that this has been responsive to your questions. If you require additional assistance in drafting the contracts for commissioning wood sculptures, please let us know. Otherwise we will, as usual, review the contracts before they are submitted to Governor and Council for final approval.

Very truly yours,

  
Leslie J. Ludtke  
Assistant Attorney General  
Division of Legal Counsel

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